



Federal Communications Commission
Washington, D.C. 20554

Ray Webb, R. Todd Webb, Rae Ann Compton
and Deborah Sweeney
c/o Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036

DA 05-2957
Released: November 14, 2005

1800E3-SMH

Sunbelt Television, Inc.
c/o Kenneth E. Satten, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037-1128

Mary Ellen Zenz, Executor of the Estates of
Margaret R. Jackson and J. Riley Jackson
c/o David L. Sanner, Esq.
Howser & Brown APC
4340 Campus Drive, Suite 100
Newport Beach, CA 92660

Initial Broadcasting of California, LLC
c/o David D. Burns, Esq.
Latham & Watkins, LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

TV Plus, LLC
c/o Howard A. Topel, Esq.
Leventhal Senter & Lerman PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809

Re: Application to Transfer Control of Sunbelt Television,
Inc., Licensee of KHIZ(TV), Barstow, California
File No. BTCCT-20050627ACU
Facility ID No. 63865

Dear Counsel:

This letter addresses a Petition to Deny ("Petition") filed by Ray Webb, R. Todd Webb, Rae Ann Compton, and Deborah Sweeney (collectively "the Webbs"), on August 5, 2005, against the above-referenced application to transfer control of Sunbelt Television, Inc., license of KHIZ(TV), Barstow, California ("Sunbelt"), from the Estates of Margaret R. Jackson and J. Riley Jackson, Mary Ellen Zenz, Executor ("Estates"), to Initial Broadcasting of California, LLC ("Initial"). The Webbs request that the Commission deny or defer action on the instant application based on a pending state

law claim involving the ownership of Sunbelt in the California state court system. For the reasons below, we find that no substantial and material question of fact has been raised concerning the application and, therefore, deny the petition.

Background. The Webbs request that the Commission deny or defer action on the instant application pending the disposition of motions they filed in California state court, contesting the 38% stock interest in Sunbelt allegedly owned by the Estates. On May 20, 2005, the Superior Court of the State of California, Orange County, issued an order approving an agreement providing for the Estates to sell 310 of their shares in Sunbelt (31%) to Initial and 70 of their shares (7%) to TV Plus, LLC.¹ The court stated in the order that it was not making a finding as to who has ownership over the stock at issue. On July 19, 2005, the Webbs filed motions requesting that the court set aside its May 20th order approving the stock purchase agreement. The motions assert that neither the estates of J. Riley Jackson or Margaret Jackson own the shares of stock which are the subject of the pending transfer of control application. In their petition, the Webbs argue that the Commission should hold in abeyance any action on the instant application until these pending motions are resolved in state court.

In a joint opposition, Mary Ellen Zenz, Executor of the Estates, Initial, TV Plus, LLC, and Sunbelt (together “the Applicants”) assert that it is well established Commission policy that the Commission will not defer action on pending transfer applications pending state court litigation.² In addition, on August 26, 2005, the applicants submitted a supplemental filing, in which they notify the Commission that the California state court has issued orders denying the motions filed by the Webbs.³ Thus, the applicants argue that the Webbs’ petition becomes even more unfounded in light of the court’s denial of the very motions on which they hinged their objection at the Commission. The applicants note that the court stated in the orders that ownership and title of the estates’ stock were not issues pending before the court.

On September 7, 2005, the Webbs filed a reply, in which they argue that because the state court did not affirmatively hold that the Estates have ownership of the stock, the issue of stock ownership is still unresolved. Furthermore, the Webbs assert that on August 26, 2005, they filed a cross complaint in the Victorville, California Superior Court, San Bernardino County, which seeks a

¹ Initial currently owns 30.4% of Sunbelt’s stock. TV Plus, LLC, however, does not presently have any interest in the licensee.

² The applicants also raise the following arguments in the joint opposition: (1) the Webbs lack standing; (2) no local court proceeding involving the issue described in the Webbs’ petition was properly pending; (3) the statute of limitations, *res judicata*, and estoppel all bar the Webbs from properly initiating such proceedings in state court; and (4) the sole purpose of the Webbs’ petition is delay; therefore, constituting a strike petition. However, in light of our decision to deny the petition based on our longstanding policy not to defer action on applications pending state court litigation, we need not address these claims.

³ In the supplemental filing, the applicants also contend that the Commission should expeditiously dismiss the Webbs’ petition and grant the instant application because a trial is scheduled for October 17, 2005, to determine whether the Webbs must transfer all of their ownership in Sunbelt to Initial, in specific performance of an agreement to which they committed. The applicants argue that if the Webbs succeed in delaying Commission action on this application, a court-ordered transfer of their shares will be similarly delayed because Initial’s approval in a long form application is a prerequisite to the Webbs’ sale to Initial.

court ruling that the respective Estates do not have ownership of any of the shares they claim. The Webbs contend that the questions raised in their petition as well as the ownership questions raised by the September 1, 2005 amendment to the instant application⁴ are subject to resolution in the California courts. The Webbs argue that, at a minimum, any grant of the instant application should be conditioned on the final outcome of any pending or subsequent cases addressing these matters.

Discussion. With respect to the Webbs' state law claim, it is well established under Commission precedent that the Commission is not the proper forum for resolving private disputes under state law, and that the Commission will not defer action on applications pending the resolution of present or future litigation properly in the California courts.⁵ Here, the California court has denied the motions filed by the Webbs. Thus, their request to delay the instant application based on those motions is now moot. Furthermore, our longstanding policy against delaying an application pending the outcome of local proceedings equally applies to any other pending state laws claims associated with this application. Moreover, our consent is permissive rather than compulsory and does not, therefore, prejudice the parties' rights. We note that if the parties close on the transaction, they do so at their own risk, and remain subject to the determination of the state courts as to their rights and obligations. Thus, grant of the application indicates only that the application complies with our rules and policies and that the parties are qualified as licensees of the Commission. It does not alter in any way the parties' rights or obligations under state law.

Conclusion. For the reasons stated above, we conclude that Sunbelt Television, Inc. is fully qualified to be the licensee of KHIZ(TV), Barstow, California. Additionally, we conclude that grant of the application will further the public interest, convenience and necessity. Accordingly, the petition to deny filed by Ray Webb, R. Todd Webb, Rae Ann Compton, and Deborah Sweeney **IS DENIED** and the application (File No. BTCCT-20050627ACU) to transfer control of Sunbelt Television, Inc., licensee of station KHIZ(TV), Barstow, California, from the Estates of Margaret R. Jackson and J. Riley Jackson, Mary Ellen Zenz, Executor, to Initial Broadcasting of California, LLC **IS GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴ The amendment was filed in response to a staff request that the applicants clarify what person or entity owns the remaining 31.6% stock interest in Sunbelt. In the amendment, the applicants stated that Ray Webb owns the 31.6% interest, and that he has purported to have made transfers of certain shares in his stock to his attorney and family members. The validity of these stock transfers is also subject to pending litigation in California state court. Sunbelt does not recognize these purported transfers of stock.

⁵ See *Margaret Jackson (Transferor) and Ray Webb, et al. (Transferees) for Consent to the Transfer of Control of Sunbelt Television, Inc.*, 18 FCC Rcd 26403 (2003) (denying request to defer action on transfer of control application based on pending litigation in California state court concerning the transferability of corporate shares under state law) ("FCC Webb Case"); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, 8624 (1992).